



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 29, 1996

Mr. Robert A. Schulman
Schulman, Walheim & Heidelberg, Inc.
745 East Mulberry, Suite 700
San Antonio, Texas 78212

OR96-1962

Dear Mr. Schulman:

On behalf of the Somerset Independent School District (the "district"), you ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 101402.

The district received a request from a district board member for certain audit reports and "[a]ny written reports, pleadings, attorney's bills, and correspondence to or from the District's Insurance carriers involving any litigation whatsoever within the last twelve months from this date (July 29, 1996)." You do not object to the release of the audit reports but assert that the remaining information requested is excepted from required public disclosure under sections 552.101, 552.102, 552.103, 552.105, 552.107, 552.109, 552.111, and 552.114 of the Government Code.¹

When asserting section 552.103(a), the "litigation exception," a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation. Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish (1) that litigation is either pending or reasonably anticipated and (2) that the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

¹We do not address whether the requestor, as a board member, has a special right of access to the requested information. Because you have sought an opinion from this office, we assume that the district is treating this request as a request for information by a member of the general public.

You claim that section 552.103 excepts information pertaining to eight different cases, six of which are pending. We note, initially, that section 552.103 is inapplicable to the two closed cases. *See* Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982). With respect to the remaining six cases, we believe that the district may withhold most of the information under section 552.103. As for the attorney billing statements, we believe that the descriptions of the services in entries relating to pending litigation satisfy the second prong of the test for section 552.103. You have not explained, however, how the amount or nature of attorneys' fees and expenses are at issue in this litigation. Therefore, we find that you may withhold under section 552.103 only the specific descriptions of services in the attorneys' fees billing statements that are related to this pending litigation. You may not withhold the dates of services, the initials of the providers, or the time and dollar amounts associated with the services under section 552.103. You also may not withhold the expenses or the miscellaneous receipts for expenses under section 552.103. In addition, you may not withhold any pleadings filed in any of the eight cases. *See* Open Records Decision No. 525 (1989).

In reaching the conclusion that most of the requested information relating to the six pending matters may be withheld under section 552.103(a), we assume that the opposing parties to the pending litigation have not previously had access to the records at issue; absent special circumstances, once information has been obtained by all parties to the litigation, *e.g.*, through discovery or otherwise, no section 552.103(a) interest exists with respect to that information. Open Records Decision Nos. 349 (1982), 320 (1982). If the opposing parties in the pending litigation have seen or had access to any of the information in these records, there would be no justification for now withholding that information from the requestor pursuant to section 552.103(a). We also note, again, that the applicability of section 552.103(a) ends once the litigation has been concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

You also raise sections 552.107 and 552.111 for all the attorney billing statements. Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is, information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. *Id.* at 5. When communications from attorney to client do not reveal the client's communications to the attorney, section 552.107 protects them only to the extent that such communications reveal the attorney's legal opinion or advice. *Id.* at 3. In addition, factual communications from attorney to client, or between attorneys representing the client, are not protected. *Id.*

With respect to your claim that the information contained in the attorney billing statements is work product, this office recently issued Open Records Decision No. 647 (1996) which held that a governmental body may withhold information as attorney work

product under section 552.111 of the Government Code if the governmental body can show (1) that the information was created for civil trial or in anticipation of civil litigation under the test articulated in *National Tank v. Brotherton*, 851 S.W.2d 193 (Tex. 1993), or after a civil lawsuit is filed, and (2) that the work product consists of or tends to reveal an attorney's "mental processes, conclusions, and legal theories." Open Records Decision No. 647 (1996) at 5. However, the work product doctrine does not extend to factual information. *National Tank*, 851 S.W.2d at 203; *Owens-Corning Fiberglass v. Caldwell*, 818 S.W.2d 749, 750 (Tex. 1991); *Leede Oil & Gas, Inc. v. McCorkle*, 789 S.W.2d 686, 687 (Tex. App.--Houston [1st Dist.] 1990, no writ); Open Records Decision No. 647 (1996).

We find that the dates of services, the initials of the providers, and the time and dollar amounts associated with these services, as well as the miscellaneous expenses and receipts related to these expenses, are purely factual and, therefore, may not be withheld under either section 552.107(1) or 552.111. With regard to the information relating to the two closed cases, we do not find any information which reflects either confidential communications from the client or the attorney's legal advice or opinions, or the attorney's mental processes, conclusions, or legal theories. Therefore, the district must release the information relating to the two closed cases in its entirety. The district must also release all information relating to the other six cases except for that information which may be withheld under section 552.103.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink that reads "Todd Reese". The signature is fluid and cursive, with the first name "Todd" and last name "Reese" clearly distinguishable.

Todd Reese
Assistant Attorney General
Open Records Division

RTR/rho

Ref.: ID# 101402

Enclosures: Marked documents

cc: Mr. Joe Tovar
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(w/o enclosures)

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